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Amendment No. 4 to HB1876

**Fitzhugh
Signature of Sponsor**

AMEND Senate Bill No. 2091

House Bill No. 1876*

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 62, Chapter 36, is amended by deleting chapter 36 in its entirety and by substituting instead Sections 2-23 as a new chapter 36.

SECTION 2. This act shall be known and may be cited as the "Geologist Licensure Act of 2007".

SECTION 3. The general assembly finds that the competent and proper application of geologic principles by geologists is vital to the lives, property, economy, security, and environment of the people of this state. In order to safeguard life, health, and property and to promote the public welfare, the practice of geology in this state is hereby declared to be subject to regulation in the public interest. Furthermore, the practice of geology is hereby declared a learned profession to be practiced and regulated as such, and its practitioners in this state shall be held accountable to the state and members of the public by high professional standards in keeping with the ethics and practices of other learned professions in this state. The purpose of this act is to introduce additional qualifying criteria in a professional field at present only partially regulated, thereby benefiting the safety, health, and property of the people of Tennessee and promoting the public welfare. The fields of geology expected to benefit are those related to the environment, mineral and fuels exploration and development, geologic hazards, basic geologic research, and other geologic matters of concern to the people of this state.

SECTION 4. As used in this chapter, unless the context otherwise requires:

(1) "Commissioner" means the commissioner of commerce and insurance, or the commissioner's designee;

(2) "Department" means the department of commerce and insurance;

(3) "Geologist" means a person qualified by education and practical experience to engage in the practice of geology;

(4) "Geologist in training" means a person who has met the educational requirements of Section 10, but is not qualified to be licensed as a professional geologist;

(5) "Geology" means the science concerning the earth and its history including:

(A) The investigation, prediction of existence, and location of:

(i) Minerals;

(ii) Rocks;

(iii) Liquids, including groundwater; and

(iv) Gases;

(B) The natural processes that cause developments and changes in the earth; and

(C) The applied science that uses knowledge of the earth and its constituent rocks, minerals, liquids, gases, and other materials for the benefit of mankind;

(6) "Practice of geology" means providing geological services except as specifically exempted by this chapter. Geological services include consultation; investigation, including the collection, removal, and analysis of samples of minerals, rocks, fluids, gases, and paleontological specimens; survey; evaluation; planning; mapping; inspection of work in the field of geology; and the responsible

supervision of work in the field of geology. The practice of geology means the practice of any branch of the profession of geology.

(7) "Licensed professional geologist" means a person who is licensed as a geologist under the provisions of this chapter;

(8) "Responsible charge of work" means accountable, independent control and direction by the use of initiative, skill, and independent judgment, of geological work or supervision of geological work; and

(9) "Subordinate" means any person who assists a licensed professional geologist in the practice of geology without assuming the responsible charge of work.

SECTION 5.

No person shall:

(a) Prepare any geologic plans, reports, or documents other than a licensed professional geologist or a subordinate under such geologist's direction;

(b) Practice geology in this state unless such person is licensed under the provisions of this chapter. A certificate of licensure is not transferable;

(c) Offer to practice geology in this state unless such person is licensed under the provisions of this chapter. To offer to practice geology in this state includes the making of a verbal claim, displaying a sign or other advertisement, using letterhead, printing cards, or using in connection with a person's name any title or description stating or implying that the person is a licensed professional geologist;

(d) On or after January 1, 2008, seal or stamp any plans, plats, reports or other documents with the seal or stamp of a licensed

professional geologist, or use in any manner the title "licensed professional geologist" or the title of any licensed certified specialty geologist unless licensed or licensed and certified under this chapter;

(e) Affix the person's signature, seal, or stamp to any geologic plans, plats, reports, or other documents after such person's licensure has expired or has been suspended or revoked, unless such person's licensure has been renewed or reissued;

(f) Give any false or forged evidence of any kind to the department when seeking to obtain the person's certificate of licensure;

(g) Falsely impersonate any other licensee of like or different name; or

(h) Attempt to use an expired or revoked certificate of licensure or continue to practice geology at any time during a period during which the department has suspended or revoked the person's certificate of licensure.

SECTION 6. This state and any county, municipality, agency, board, district, commission, authority, or other political subdivision of the state shall only contract for geological services with persons licensed under this chapter or with a firm employing a licensed professional geologist who shall be in responsible charge of providing such services, except as otherwise provided by this chapter.

SECTION 7. Any person, except a person exempted by this chapter, who practices or offers to practice geology in this state, including a person employed by the state or its political subdivisions, is subject to the provisions of this chapter. The following are exempt:

(1) Any person engaged solely in teaching the science of geology or engaged solely in nonpublic geologic research in this state. However, a

teacher or researcher shall be certified as licensed professional geologist if the teacher or researcher wishes to perform any geologic work or services for which licensure as a geologist is required by this chapter;

(2) An employee or subordinate of a licensed professional geologist insofar as the employee or subordinate acts solely in such capacity. This exemption shall not permit any such employee or subordinate to practice geology independently or use the term "licensed professional geologist."; and

(3) Any person who is employed either by the state or by a person, firm, or corporation not engaged in the practice of geology if such person provides geologic services to the employer only and not to the general public.

SECTION 8.

(a) A sole proprietorship, partnership, or corporation that provides geological services as its primary activity may engage in the practice of geology, provided, that at least one (1) principal or officer is in responsible charge of such activity and is a licensed professional geologist. A sole proprietorship, partnership, or corporation whose primary activity is other than the practice of geology may offer geological services; provided, that a licensed professional geologist is in responsible charge of such activity. The exemptions of Section 7 shall apply to sole proprietorships, partnerships, and corporations.

(b) This chapter shall not be construed to prevent or to affect the practice of any profession or trade related to geology for which a license or registration is required under any other law of this state; provided, that such work is permitted under the applicable licensing or registration law, or the right of licensed professional engineers to lawfully practice foundation engineering, geotechnical engineering, soils mechanics, or other professional engineering as provided by

title 62, chapter 2 or registered architects from lawfully practicing architecture as provided by title 62, chapter 2.

SECTION 9. An application for licensure as a geologist shall indicate the applicant's education and provide a detailed summary of geologic work. The application shall be accompanied by an application fee fixed by the department, and shall include a certified transcript.

SECTION 10.

(a) To be eligible for a certificate of licensure, an applicant shall meet each of the following minimum qualifications:

(1) Be of good moral character;

(2) Be a graduate of an accredited college or university. The applicant shall have successfully completed a minimum of thirty (30) semester or forty-five (45) quarter hours of course work in geology, geophysics, geochemistry, engineering geology or their subdivisions. The department may waive the academic requirements for a person who is a geologist, provided that application for licensure is made not later than January 1, 2009. and the applicant can provide evidence to satisfy the department that the applicant is competent to practice geology;

(3) Have at least five (5) years of geological education and professional experience. Any combination of the following kinds of education and experience qualify toward accumulating the required five (5) years:

(i) Each year of graduate study shall count as one (1) year of experience; provided, that credit for graduate study or graduate courses, individually or in any combination of graduate study and courses, shall in no case exceed a total of

two (2) years toward meeting the five-year requirement of this subdivision (3);

(ii) Each year of teaching or geological research by persons teaching upper-level geology courses at the college or university levels; provided, that such teaching or research can be demonstrated to be of a sufficiently responsible nature to be equivalent to a year of professional experience; and

(iii) The geologic ability of an applicant shall be demonstrated by the applicant performing professional geologic work in a responsible position as determined by the department. The adequacy of the required supervision and experience shall be determined by the department in accordance with rules promulgated by the department;

(4) Have successfully passed such examination or examinations developed or determined by the department to assess adequately the knowledge and skills that are common to the competent practice of geology as a profession. The department shall waive the examination requirement for licensure as a geologist for an applicant who makes written application to the department not later than January 1, 2009, and who otherwise meets the requirements of this subsection (a).

(b) Any person who holds an active certificate as a registered geologist or licensed professional geologist under the Geologists Registration Act of 1988 prior to January 1, 2008, shall be deemed to have met the requirements of subdivisions (a)(2),(3), and (4). Such person shall be issued a certificate of licensure when renewal is due under the established renewal cycle upon applying for and meeting all requirements for renewal. The department shall

assign the registration number of the registration certificate as the certificate of licensure number. Any person holding an active certificate as a registered geologist or licensed professional geologist prior to January 1, 2008 who does not renew such certificate when renewal is due shall be required to apply for licensure under this chapter and meet all requirements of subsection (a) except that a reasonable period of time shall be accorded by the department for late renewals.

SECTION 11. A person holding a license or registered to practice geology issued by proper authority of a state, territory, or possession of the United States, the District of Columbia, or any foreign country, on the basis of comparable licensing or registration requirements. and who, in the opinion of the department otherwise meets the requirements of this chapter, based on verified evidence may, upon approval of an application for licensure, be licensed without further examination, provided that the state, agency, or country issuing the license or certificate of registration has entered into a reciprocity agreement with the department, is part of a general reciprocity agreement among all applicable states, or has established some other form of mutual recognition of licensure or comity with the department.

SECTION 12.

(a) The department shall issue a certificate of licensure, upon payment of a fee prescribed by the department, to any applicant who complies with the requirements of this chapter. Certificates of licensure shall state the full name of the licensee, bear a certificate of licensure number, and be signed by the commissioner or the commissioner's designee under the seal of the department.

(b) A certificate of licensure shall be valid for a period of two (2) years. A fee prescribed by the department shall be imposed for each late certificate of

licensure renewal.

(c) A new certificate of licensure may be issued to replace any certificate of licensure lost, destroyed, or mutilated, subject to the rules of the department and payment of a fee prescribed by the department.

(d) Upon a written request accompanied by a fee prescribed by the department for change in status, a licensee shall be placed on retired or inactive status. No retired or inactive licensee shall engage in any geologic work or services for which licensure as a geologist is required by this chapter. The department shall prescribe rules outlining the procedure for placing a licensee in retired or inactive status and subsequent reinstatement to active status.

SECTION 13. A licensed professional geologist, upon issuance of a certificate of licensure, shall obtain a seal of the design authorized by the department, bearing the licensee's name and the legend "licensed professional geologist" and identifying the state of Tennessee. All drawings, reports, or other geologic papers or documents involving geologic work as defined in this chapter, that have been prepared or approved by a licensed geologist or a subordinate employee under such geologist's direction for the use of or for delivery to any person or for public record within this state, shall be signed by the licensee and impressed with the licensee's seal. These acts shall indicate a licensee's responsibility for such drawings, reports, or other geologic papers or documents.

SECTION 14.

(a) The commissioner may establish an advisory committee for geology composed of seven (7) members.

(b) In making appointments to the committee, the commissioner shall strive to ensure that the committee includes at least one (1) female, at least one (1) member of a racial minority, and at least one (1) person who is at least sixty

(60) years of age. The commissioner may also strive to ensure that the geologist members are from each of the following professional groupings: environmental, mineral and fuel exploration and development, geologic hazards, and geologic research.

(c) The committee shall be administratively attached to the department's division of regulatory boards.

(d) Committee members shall receive no compensation but shall be reimbursed for actual travel and other expenses incurred in attending each meeting and in performing any other duties provided for in this chapter. All reimbursement for such expenses shall be in accordance with the comprehensive travel regulations promulgated by the commissioner of finance and administration and approved by the attorney general and reporter.

(e) The committee shall assist the commissioner with the promulgation of rules for the implementation of the requirements of this chapter.

SECTION 15. In addition to other powers and duties specified in this chapter, the department shall:

(a) Promulgate rules and regulations necessary to carry out the provisions of this chapter in compliance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;

(b) Design and adopt an official seal for licensed professional geologists;

(c) Set the amount of all fees required by this chapter;

(d) Identify and approve continuing education programs for persons regulated by the department under this chapter. The department may prescribe regulations requiring continuing education as a prerequisite for renewal of certificate of licensures;

(e) Receive, administer, and account for all moneys derived under the provisions of this chapter, and transfer these funds to the state treasurer who shall keep such moneys in a fund to be known as the "Geologists Fund." Such fund shall be used to defray expenses incurred in the administration of this chapter, provided, however, that any unencumbered or unexpended balance of this fund remaining at the end of any fiscal year shall revert to the general fund;

(f) Prepare, administer, and grade examinations required by this chapter. The department shall have the authority to adopt or recognize, in part or in whole, examinations prepared, administered, or graded by other organizations, on a regional or national basis, that the department determines are appropriate to measure the qualifications of an applicant for licensure as a geologist, provided that the examination questions and correct answers, and any individual applicant's completed examination, are available to the department, and that the department retains the authority to determine a passing grade for purposes of licensure in this state; and

(g) Have such other powers and duties as are necessary to effectuate the provisions of this chapter.

SECTION 16.

(a) The department shall keep a public record of its proceedings and a register of all applicants for licensure.

(b) All official records of the department, or affidavits by the commissioner as to the contents of such records, shall be prima facie evidence of all matters required to be kept therein.

(c) Except as otherwise provided by this subsection, the following shall be treated as confidential and may not be disclosed except by order of a court of competent jurisdiction or by permission of the applicant:

(1) Applications, and other personal information submitted by applicants, except to the applicant, the department, its staff, or the advisory committee; and

(2) Information submitted by a reference concerning an applicant, except to the department, its staff, or the advisory committee.

SECTION 17. The department shall publish semi-annually a roster showing the names and places of business of all geologists licensed in this state. Copies of this roster shall be placed on file with the secretary of state and the offices of the Tennessee division of geology, and furnished to any licensee upon request free of charge or to the public upon request and payment of a fee, not to exceed cost, to be established by the department.

SECTION 18. The department shall promulgate a code of professional conduct that shall be made known in writing to every licensee and applicant for licensure under this chapter. The department may revise and amend this code of ethics from time to time and shall forthwith notify each licensee in writing of such revision or amendments.

SECTION 19. Any person may file a complaint with the commissioner against a licensee alleging fraud, deceit, gross neglect, incompetence, or misconduct. Complaints shall be made in writing.

SECTION 20.

(a) The department shall have the power to suspend, revoke, or refuse to renew the certificate of licensure of any licensee who:

(1) Is found to have been convicted of:

(A) Any fraud or deceit in obtaining a certificate of licensure;

(B) Any felony or any crime involving moral turpitude;

(C) Any unlawful act as set forth in this chapter; or

(2) Who is found guilty of fraud, deceit, gross neglect, incompetence, or misconduct in the practice of geology as a licensed professional geologist.

(b) Any such action by the department to suspend, revoke, or refuse to renew a certificate of licensure shall be taken after a hearing held in accordance with the procedures set forth in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) Any administrative or judicial review of such action shall likewise be in accordance with the procedures set forth in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(d) The department may seek relief at law or equity to restrain or enjoin any act or practice in violation of this chapter, or of any rule promulgated to effectuate the purposes of this chapter. Jurisdiction is conferred upon the chancery and circuit courts of this state to hear and determine such a suit. No bond shall be required for the prosecution of the suit or for the issuance of an injunction.

(e) Members of the department are officers of the state in carrying out the duties imposed by this chapter and as such have the full measure of governmental immunity provided by law.

SECTION 21. The department may reissue a certificate of licensure to any person whose certificate of licensure has been revoked upon written application to the department by the applicant, showing good cause to justify such reissuance.

SECTION 22. Legal counsel shall be provided by the division of regulatory boards.

SECTION 23.

(a) A violation of this chapter is a Class B misdemeanor.

(b) In addition to, or in lieu of, any other lawful disciplinary action under this chapter the commissioner may assess a civil penalty not exceeding one thousand dollars (\$1,000) per violation. All penalties owed under this chapter shall be paid to the department for deposit into the treasury of the state of Tennessee and shall accrue to the state and may be recovered in a civil action in the name of the state in any court of record in the county where the violation is alleged to have occurred.

(c) Any civil penalty shall be assessed in the following manner:

(1) A notice of such assessment shall be sent to the person receiving it by certified mail, return receipt requested;

(2) Any person against whom an assessment has been issued may petition the commissioner for a review of the assessment;

(3) The petition for review shall be in writing, and shall be filed no later than thirty (30) days after the notice of assessment is received;

(4) If a petition for review of the assessment is not filed within thirty (30) days after the date the notice is received, then the violator shall be deemed to have consented to the assessment and it shall become final; and

(5) If a petition for review of the assessment is filed as provided by this section, then the proceedings on such appeal shall be conducted in accordance with the provisions set forth in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5 with respect to the conduct of contested cases.

SECTION 24. If any provisions of this act or the application thereof to any person or circumstances is held invalid by any court, such invalidity shall not affect other

provisions or applications of the act that can be given effect without the invalid provisions or applications, and to this end the provisions of this act are declared to be severable.

SECTION 25. For the purposes of the promulgation of rules and regulations, the provisions of this act shall take effect on becoming a law, the public welfare requiring it. The provisions of Section 14 shall take effect on becoming law, the public welfare requiring it. For all other purposes this act shall take effect January 1, 2008, the public welfare requiring it.